IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7772 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE N.G.NANDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

SL DAMOR

Appearance:

1. Special Civil Application No. 7772 of 1993

MR HARDIK C RAVAL for Petitioner No. 1

NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE N.G.NANDI

Date of decision: 12/03/2003

ORAL JUDGEMENT

1. Heard Mr. Hardik C. Raval, learned advocate for the petitioner. Respondent served.

2. In this petition under Article 227 of the Constitution of India, the petitioner has been challenging the order passed in Reference (LCB) No. 136 of 1991 dated 15-10-1992 by the Labour Court, Godhra, district Panchmahal, directing reinstatement of the respondent workman with 25 % backwages.

3. The say of the petitioner management is that, in the course of duty as conductor, the respondent workman on 2nd January 1986, in a bus plying between Ahmedabad to Santrampur, when the bus was checked, it was inter alia found that the respondent has misconducted in as much as he had collected Rs.24/- from some travelling passengers but had issued tickets for lesser amount; that he had re-issued used tickets to another passenger which ticket was used in an earlier trip; and that the respondent had issued used four tickets of Rs.4-00 each to four other passengers, and thus committed the act of fraud and misappropriation.

4. Regular departmental inquiry was held against the respondent, in which respondent was found guilty of re-issuing the used tickets. Respondent was served with second show cause notice and thereafter, after considering the explantation tendered by the respondent, he was dismissed from service vide order dated 24-4-1990. The respondent preferred departmental appeal which also came to be dismissed by order dated 24-8-1990.

5. The respondent thereafter raised industrial dispute before the Labour Court, Godhra being Reference (LCB) No. 136 of 1991. The Labour Court by award dated 15-10-1992 directed reinstatement of the respondent and further directed payment of 25 % backwages. It is this order of the Labour Court which is questioned in this Special Civil Application by the petitioner-management.

6. Perusal of the impugned award suggests that the respondent workman while on duty as conductor of an ST bus recovered fare and reissued the tickets, which were earlier issued to some other passengers, and on these allegations departmental inquiry was conducted and was found guilty of misconduct, and the workman came to be dismissed from service for the said misconduct. The departmental appeal also came to be dismissed and in the Reference the Labour Court directed reinstatement of the workman in service with 25 % backwages. It is proved during the inquiry, as also held by the Labour Court that the respondent workman has committed misconduct by reissuing tickets earlier used, and given the same to the

passengers by collecting fare of Rs.16/- from four passengers, i.e. Rs.4/- from each of the passengers.

7. Mr. H.C. Raval, has placed reliance upon a decision in case of GSRTC VS. KACHRAJI MOTIJI PARMAR, 34 (1) GLR, PG. 302 (D.B.) and contended that, when the charges of misappropriation are proved against the workman concerned, and that being a major misconduct, normally dismissal order passed by the competent authority should not be interfered with by the Labour Court or the Industrial Court under Section 11-A of the Industrial Disputes Act.

8. Reliance is also placed in a decision in case of KARNATAKA STATE ROAD TRANSPORT CORPORATION Vs. B.S. HULLIKATTI (2001) 2, SCC, pg. 574, wherein the Supreme Court held that the bus conductor charging higher fare from passengers, knowing well the correct fare to be charged amounted to gross misconduct as the things speaks for themselves and the order of dismissal held to be justified. The Supreme Court did not interfere with the reinstatement of the workman as the workman in the meantime was superannuated.

9. In the instant case the misconduct namely reissuing the tickets earlier issued to some other passengers has been established during departmental inquiry and also accepted by the Labour Court. In view of the provisions contained in Section 11-A of the I.D. Act and the principle laid down in case of GSRTC Vs. Kachraji Motiji Parmar and Karnataka State Road Transport Corporation (supra) the Industrial Court could not have interfered with the punishment of dismissal from service when the misconduct of a grave nature is established.

10. In the instant case pursuant to the order passed by the Labour Court directing reinstatement in service of the workman, the respondent workman has been reinstated in service. It is not the say of Mr. Raval that, after reinstatement in service respondent has misconducted himself, and the respondent is in service for quite a long time. Under the circumstances I do not think it appropriate to exercise the discretion under Article 227 of the Constitution of India as regards the reinstatement in service directed by the Labour Court. However, looking to the facts and especially the provisions contained in Section 11-A of the I.D. Act, and the principle laid down in the above mentioned cases, and looking to the gravity of the misconduct; the Labour Court cannot be said to be justified in directing payment of 25 % backwages, and that part of the impugned order

needs to be interfered with, exercising the discretion under Article 227 of the Constitution of India, having regard to the facts & circumstances of the case.

10. In the result, the petition is partly allowed to the extent of the direction to pay 25 % backwages to the respondent workman, and accordingly, reinstatement of the respondent workman shall be without any back wages.

11. Rule made absolute to the aforesaid extent. No order as to cost.

Dt: 12-3-2003 (N.G. Nandi, J)

/vgn